



**GROSS BELSKY ALONSO LLP**  
ATTORNEYS AT LAW

January 8, 2016

The Honorable Charles R. Breyer  
United States District Court  
Northern District of California  
450 Golden Gate Avenue, Courtroom 6  
San Francisco, CA 94102

Re: *In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, MDL No. 2672 (JSC), Leadership Application of Terry Gross

Your Honor:

I hereby respectfully submit this letter as my application for appointment to the Plaintiffs' Steering Committee, representing car owners and lessees. My 35 years of experience and legal record demonstrates that I am well-qualified to act as a leadership position in this case. I have held leadership positions in numerous class action cases, and have engaged in complex civil litigation throughout the country. Significantly, I have experience specific to automotive cases, as I have been counsel for several different automotive manufacturers, and thus possess insights into this industry that will be especially useful in this litigation. Below are my responses to the questions that Your Honor raised in Pretrial Order No. 2:

**1. Professional Experience in This Type of Litigation**

Since 1994, my practice has focused on class action litigation. I am currently Chair of the Indirect Purchaser Plaintiffs' Executive Committee in *In re DRAM Litigation* (MDL No. 1486), one of the first indirect purchaser actions in federal court after the passage of the Class Action Fairness Act in 2005, spearheading the pleading in one complaint of antitrust and consumer protection claims under the laws of numerous states. I played a pivotal leadership role, along with the co-lead counsel, in obtaining recoveries for a nationwide class of \$310 million.

In addition, I was Liaison Counsel for the end-user class, in *In re Automotive Paint Antitrust Action* (California Superior Court, Alameda), recovering \$10 million for price-fixing in automotive paint; Liaison Counsel and Settlement Class Counsel, *Perish v. Intel Corp.* (California Superior Court, Santa Clara), a consumer fraud class action; Co-Chair of the Plaintiffs' Steering Committee, *Microsoft Antitrust Class Action Litigation* (California Superior Court, San Francisco), an antitrust action based on Microsoft's monopolization of the personal computer operating system and software market, which recovered \$1.1 billion for California consumers; Executive Committee and co-trial and appellate counsel, *Wisper v. Old Republic Title Company* (California Superior Court, San Francisco), an unfair competition and consumer fraud class action resulting in a \$21 million recovery after trial; Co-Liaison Counsel, *The Carbon Fiber Cases* (California Superior Court, San Francisco), a class action for price-fixing in the sale of carbon fiber products. Further, I have a

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member of the Plaintiffs' Executive Committees in numerous cases, such as: *Flat Glass Antitrust Litigation*, *Sanitary Paper Antitrust Litigation*, *Vitamin Cases Antitrust Litigation*, and *Cosmetics Antitrust Litigation*, antitrust actions challenging price-fixing in the glass, sanitary paper, cosmetics and vitamin industries; *Providian Credit Card Cases* (California Superior Court, San Francisco), an unfair competition, false advertising, and consumer fraud action. In a mass tort action, I was a member of the Plaintiffs' Executive Committee in *The Clergy III Cases* (California Superior Court, Alameda), a coordinated action involving all the cases of clergy abuse against the Roman Catholic Church in Northern California, and achieved the single highest recovery on behalf of an individual in those coordinated cases. Our firm also played a significant role in *In re TFT-LCD (Flat Panel) Antitrust Litigation* (MDL No. 1827).

I also have engaged in numerous complex litigation matters throughout the United States and abroad, often representing foreign governments and instrumentalities. For example, I represented the national telephone company of Bolivia in proceedings in New York and London, both at the trial level and on appeal, and successfully overturned attachment orders of the telephone company's assets, issued after the telephone company had been nationalized. I was advisor to and lead counsel for the Republic of Panama in case involving the attachment of planes from the national airlines; I represented the Cuban national telephone company and successfully overturned the attempted garnishment of its assets to satisfy a judgment against the Republic of Cuba relating to the downing of a plane over Cuban territory; and represented the Republic of South Africa in lawsuits concerning Internet activity and domain names. I also represented *The New York Times* and several *Business Week* journalists against Hewlett-Packard, seeking and obtaining damages when HP illegally obtained private telephone records of the journalists in an attempt to learn the trade secrets of the identities of the journalists' sources.

Further, I have advised and engaged in significant litigation concerning constitutional rights. As the first general counsel for the Electronic Frontier Foundation, a civil liberties organization focusing on first amendment issues surrounding Internet-based technology, I litigated First Amendment issues concerning online activity. I represented Think Secret, an online journalist improperly sued by Apple for trade secret misappropriation, counterattacking by seeking sanctions against Apple for filing a lawsuit without merit, obtaining a substantial recovery. I have been general counsel for Burning Man, and in that capacity litigated numerous trademark, copyright and privacy matters on its behalf, including a successful defense of a lawsuit challenging the event's major trademarks.

## 2. Names and Contact Information of Judges

The following judges can provide information about my expertise and skill:

- Hon. Phyllis Hamilton, U.S. District Court Judge, Northern District of California, San Francisco Courthouse, 17th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102
- Hon. Ronald M. Sabraw, JAMS, Two Embarcadero Center, Suite 1500, San Francisco, CA 94111
- Hon. David A. Garcia, JAMS, Two Embarcadero Center, Suite 1500, San Francisco, CA 94111
- Hon. Daniel Weinstein, JAMS, Two Embarcadero Center, Suite 1500, San Francisco, CA 94111
- Hon. Charles B. Renfrew, 633 Battery Street, San Francisco, CA 94111.

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**3. Willingness and Ability to Immediately Commit to Time-Consuming Litigation**

In order to achieve stellar results in litigation, I have found that it is essential to fully immerse myself in each case in which I am involved. If I am appointed to the Steering Committee, I intend to commit myself fully to the litigation, and have sufficient time available to do so. I will be able to delegate to others in my firm the principal other matters in which I am presently involved. As Your Honor has pointed out, given that liability is not an issue, but the principal issue is the method of fashioning a proper recovery for injured parties, this is a case that should be resolved quickly, and I will dedicate the time and effort necessary to help achieve this goal.

**4. Willingness and Ability to Work Cooperatively with Others**

The only way to achieve success in plaintiffs' class action litigation is to work cooperatively with others. In all of the class action cases in which I have been involved, either as lead or liaison counsel or as chair or a member of the plaintiffs' executive committee, we have fashioned strong teams to create an efficient force to vindicate our clients' rights, and this is demonstrated by the outstanding recoveries that have been achieved.

**5. Access to Resources to Prosecute the Litigation in a Timely Manner**

Our firm has substantial resources, both financial and in attorneys and staff, to prosecute this case in an efficient and rapid manner.

**6. Willingness to Serve as Lead Counsel and Member of a Steering Committee**

I request to be appointed as a member of the Plaintiffs' Steering Committee.

**7. Particular Category or Categories of Plaintiffs I Want to Represent**

I wish to represent vehicle owners and lessees.

**8. Any Other Considerations That Qualify Me for a Leadership Position**

I have experience in the automotive industry concerning design and testing of automobiles, and thus have knowledge that will be extremely helpful in this case. For example, I have been counsel for Tesla Motors Company in a trade secret misappropriate case, and for Isuzu Motor Company in a case that alleged that Isuzu cars suffered from engineering defects.

Respectfully submitted,

/s/ Terry Gross

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